

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

K. WESLEY

Plaintiff,

vs.

Case No:

ALON MANAGEMENT XXII, LLC

Defendant.

NOTICE OF REMOVAL

Defendant Alon Management XXII, LLC gives notice of removal of this action from the Circuit Court of Jackson County, Missouri (Case No. 2016-CV17538) to the United States District Court, Western District of Missouri, Western Division, in accordance with 28 U.S.C. § 1446. This Court has jurisdiction over this action because there is complete diversity of citizenship between parties, and the amount in controversy exceeds \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332. As grounds for removal, Defendant further states:

1. Plaintiff Kenneth Wesley filed this action on August 25, 2020 in the Circuit Court of Jackson County, Missouri, Case No. 2016-CV17538.
2. The Petition erroneously names the Defendant as “Alon, Anne & Regev D/B/A McDonald’s” and describes the Defendant as “Defendant Company.” Petition at 2, ¶ 7.
3. The Petition erroneously states that “Defendant Company” is a corporation.
4. There exists no such legal entity named “Alon, Anne & Regev D/B/A McDonald’s.”
5. Thus, “Alon, Anne & Regev D/B/A McDonald’s” is not a proper defendant.
6. Plaintiff Kenneth Wesley is a citizen of Missouri. Petition at 2, ¶ 6.
7. As discussed below, Defendant is a citizen of Kansas.

8. The Jackson County docket shows that service of the petition and summons was recorded as September 4, 2020.
9. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served on Defendant and a copy of the state court docket and all documents, including the Petition (JACKSON 002-013), filed in the state court action are attached. (Exhibit 1)
10. Venue is proper in this Court pursuant to 28 U.S.C. §§ 96, 1391, 1441(a), and 1446(a) because the Circuit Court of Jackson County, Missouri, where this action was filed, is a state court within the Western District of Missouri.
11. Jackson County, Missouri is within the Western Division of the Western District of Missouri. Local Rule 3.2(a)(1)(A).
12. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(a) because (1) there is complete diversity of citizenship between Plaintiff and Defendant; (2) the amount in controversy exceeds \$75,000, exclusive of interests and costs; and (3) all other requirements for removal have been satisfied.
13. For purposes of diversity jurisdiction, a limited liability company is a citizen of every state in which its members are citizens. *Jet Midwest International Co., Ltd v. Jet Midwest Group, LLC*, 932 F.3d 1102, 1104 (8th Cir. 2019).
14. A person is a citizen of the state in which he is domiciled. *Aly v. Hanzada for Import & Export Co., LTD*, 864 F.3d 844, 847 (8th Cir. 2017).
15. Applying these principles, there is complete diversity of citizenship here because Plaintiff is a Missouri citizen and Defendant is a Kansas citizen.
16. Plaintiff Kenneth Wesley is domiciled at 7941 Olive Street, Kansas City, Missouri 64132 and is a Missouri citizen. Petition at 2, ¶ 6.

17. The McDonald's franchise located at 7887 State Line Road, Kansas City, Missouri 64114 is owned by Alon Management XII, LLC, a limited liability company organized in Missouri. Declaration of Anne Alon, ¶ 4 (Exhibit 2); Declaration of Regev Alon, ¶ 4 (Exhibit 3).
18. "[A]n LLC is not necessarily a citizen of its state of organization but is a citizen of each state in which its members are citizens." *OnePoint Solutions, LLC v. Borchert*, 486 F.3d 342, 347 n.4 (8th Cir. 2007).
19. As the owner of the McDonald's franchise at 7887 State Line Road, Alon Management XII, LLC was Wesley's employer. Declaration of Anne Alon, ¶ 5; Declaration of Regev Alon, ¶ 5.
20. Thus, Alon Management XII, LLC is the proper defendant in this case.
21. The sole member of Alon Management XII, LLC is Alon Group LLC, a limited liability company organized in Kansas. Declaration of Anne Alon, ¶ 6; Declaration of Regev Alon, ¶ 6.
22. The members of Alon Group LLC are Anne Alon, Regev Alon, and Alon Management, LLC, a limited liability company organized in Kansas. Declaration of Anne Alon, ¶ 7; Declaration of Regev Alon, ¶ 7.
23. The members of Alon Management, LLC are Anne Alon and Regev Alon. Declaration of Anne Alon, ¶ 8; Declaration of Regev Alon, ¶ 8.
24. Anne Alon and Regev Alon reside at 11523 West 159th Terrace, Overland Park, Kansas 66221 and are domiciled in Kansas. Declaration of Anne Alon, ¶ 10; Declaration of Regev Alon, ¶ 10.

25. Anne Alon and Regev Alon are citizens of Kansas. Declaration of Anne Alon, ¶ 9; Declaration of Regev Alon, ¶ 9.
26. Thus, complete diversity exists because Plaintiff is a citizen of Missouri and Defendant LLC is a citizen of Kansas as all of its members are citizens of Kansas.
27. To the extent that the Petition could be construed to name Anne Alon and Regev Alon as defendants individually, both are citizens of Kansas and diversity jurisdiction exists.
28. Thus, Plaintiff and Defendant are “citizens of different States” for the purposes of diversity jurisdiction. 28 U.S.C. § 1332(a)(1).
29. “[A] defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014). “[W]hen a defendant seeks federal-court jurisdiction, the defendant’s amount-in-controversy allegation should be accepted when not contested by the plaintiff or questioned by the court.” *Id.* at 87.
30. Here, the Petition alleges that Wesley’s pay was \$40,000 a year. Petition at 3, ¶ 16.
31. The Petition alleges that Wesley is 44 years old. Petition at 3, ¶ 9.
32. The Petition prays that this Court order “front salary and benefits for the period remaining until normal retirement.” Petition at 11-12, ¶ 102(c).
33. The Petition also seeks back pay, fringe benefits, compensatory damages, punitive damages, liquidated damages, emotional pain and suffering damages, and attorney fees. Petition at 12, ¶ 102(d)-(g).
34. Thus, by alleging damages of \$40,000 a year for more than 20 years plus other damages, the alleged amount in controversy exceeds \$75,000, exclusive of interest and costs.

35. This Notice of Removal is timely filed. Service was recorded at September 4, 2020.

Because Defendant filed the Notice of Removal on October 2, 2020, removal is timely.

See 28 U.S.C. § 1446(b)(1).

36. Pursuant to 28 U.S.C. § 1446(d), Defendant will give written notice of the filing of the

Notice of Removal to all parties of record in this matter, and will file a copy of this

Notice of Removal with the clerk of the Circuit Court of Jackson County, Missouri.

WHEREFORE, Defendant removes this action from the Circuit Court of Jackson County, Missouri, to the United States District Court for the Western District of Missouri.

Respectfully Submitted,

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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2020, I electronically filed the foregoing with the Clerk of the Court using the Court's ECF system, which will send a notice of electronic filing to all counsel of record. In addition, the foregoing was served by electronic mail to the following:

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/s/ Tara Eberline

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